APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 6934.

MORRIS LIPSITZ, and
MORRIS LIPSITZ and HELEN LIPSITZ,
Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITIONS TO REVIEW THE DECISIONS OF THE TAX COURT OF THE UNITED STATES.

(Argued March 7, 1955. Decided April 12, 1955.)

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

Llewellyn A. Luce (Walter H. Maloney on brief) for Petitioners; and Robert B. Ross, Special Assistant to the Attorney General, (H. Brian Holland, Assistant Attorney General; Ellis N. Slack and Robert N. Anderson, Special Assistants to the Attorney General, on brief) for Respondent.

DOBIE, Circuit Judge:

These are appeals from judgments of the Tax Court of the United States against Morris Lipsitz (hereinafter

called Lipsitz) individually for the years 1938, 1939, 1940, 1941 and 1944, and against Lipsitz and his wife, Helen Lipsitz, for the years 1942 and 1943. The Tax Court found deficiencies in tax for each of these years and also assessed fifty percent fraud penalties for each year.

Lipsitz and Helen Lipsitz have appealed to us and have raised two main questions. First, did the Tax Court erroneously attribute income to Lipsitz that arose from property owned by him and his wife as tenants by the entirety? Second, was there error in the Tax Court's findings of fact as to the value of certain assets sold by Lipsitz in 1941? Since we think the Tax Court correctly ruled on these and all other points raised by these appeals, its decision must be affirmed.

This case was presented by the Commissioner on a net worth basis since Lipsitz had no proper records or books. The evidence and exhibits are quite voluminous and we will not detail them here except as relevant to the particular questions raised. The record before us shows that during the years 1938 through 1944 Lipsitz and his wife owned a substantial amount of property as tenants by the entirety. In determining deficiencies against Lipsitz for the years in which he filed individual returns, the Tax Court treated all income earned on assets owned by Lipsitz and his wife as being taxable to Lipsitz. Lipsitz now contends that he should have been taxed upon only half the income from property owned by him and his wife as tenants by the entirety.

It is well settled that the measure of title, and the rights thereto incident, in property held by husband and wife under a tenancy by the entirety, are to be determined here by the law of Maryland. And under that law, each spouse, husband and wife, is ordinarily entitled each to one-half of the income from such property. *Masterson* v.

Masterson, 129 Md. 167, 98 Atl. 537. In *Saulsbury* v. *Commissioner,* 27 B. T. A. 744, the head-note reads:

> "The petitioner and his wife, residents of Maryland, owned personal property as tenants by the entirety. *Held* that *in the absence of an agreement between them for the distribution of the earnings on a contrary basis,* the husband is taxable on one-half of the income from such property." (Emphasis added.)

It was also stated in the opinion: "It does not appear, and it is not claimed, that such an agreement was ever entered into." In *Brell* v. *Brell,* 143 Md. 443, 122 Atl. 635, it was held that where proceeds from a farm owned by husband and wife were paid to the husband, with the acquiescence of the wife, who likewise acquiesced in the application of the proceeds to a debt due one of her sons and the payment of their living expenses, in the absence of an express promise by the husband to repay the amount paid to the son and for living expenses, there is no implied obligation on his part to do so. See, also, *Jenkins* v. *Middleton,* 68 Md. 540, 13 Atl. 155; *Farmers & Merchants National Bank* v. *Jenkins,* 65 Md. 245; 3 Atl. 302.

We think here there was a clear agreement between husband and wife, followed by a long continued practice, that the income from these properties held under a tenancy by the entirety, should be considered in all respects as the income of the husband. He completely controlled the properties, made all decisions as to the purchase and sale of the properties. Indeed, Mrs. Lipsitz had so little connection with these properties that she failed to appear at the lengthy trial before the Tax Court. In reality, it was the husband who actually earned this income. There is nothing in the record to indicate that Mrs. Lipsitz either paid any commission to her husband for her share of the rentals collected or compensated him for his labor, materials and business acumen in the premises.

Further, Lipsitz again and again testified that he considered this income as his own. For example, in response to a question, he stated: "It didn't belong to me, it belonged to my wife. *It is mine just the same.*" (Italics ours.) In colloquy between counsel for Lipsitz and the Court this interchange occurred:

> The Court: "Now do I understand both parties to agree that the assets of both these Petitioners may be considered together?"
>
> Mr. Luce: "Yes, your Honor; and it is the way the net worth statements have been set up."

In the light of all these circumstances, we find no reversible error in the action of the Tax Court, which treated the income from the properties held by Lipsitz and his wife under a tenancy by the entirety, as the income of Lipsitz alone.

We now turn to the second error alleged by Lipsitz. In 1933 Lipsitz and Louis Shane organized the Warner Ice Corporation, with each of them owning one half of the capital stock. This corporation functioned until June, 1937, when Lipsitz and Shane had a disagreement which culminated in the purchase of Shane's half interest in the corporation by Lipsitz who then became the sole stockholder. He immediately dissolved the corporation, transferring all of its assets to himself and his wife. Lipsitz continued in the ice business as the Warner Ice Company until 1941, at which time he sold his entire interest in the business, including the assets required on dissolution of the Warner Ice Corporation, to the Merchants Terminal Corporation for $57,500. Lipsitz reported no income from the sale of these assets, contending that he had suffered a capital loss. The Tax Court found, however, that there had been a capital gain of $17,357.49 from the sale of this property. Although Lipsitz contends that this finding is

erroneous, we think that the record before us amply supports the Tax Court.

The differenec of opinion arose over the computation of a basis for the calculation of gain or loss from the sale of the assets in 1941. Lipsitz contended that this basis was $108,951.76, resulting in a capital loss. The Tax Court found, however, that the basis of these assets actually was only $40,142.51. We think that this finding has ample support in the record.

The greater portion of the property sold by Lipsitz in 1941 was acquired by him from dissolution of the Warner Ice Corporation in 1937. This dissolution was a taxable transfer, and the property acquired by Lipsitz would take as its basis its fair market value at the time of the dissolution. The Tax Court found this value to be $36,000. Since this value has great relevancy in determining the basis of the property sold in 1941, a great deal of evidence was entered concerning fair market value of this property in 1937.

Lipsitz had purchased Shane's half-interest in this property immediately prior to dissolution of the Warner Ice Corporation in 1937. He transferred certain property to Shane for the purchase price. The Tax Court found that this property, land, buildings and machinery, had a value of $22,300. Lipsitz contends that this figure does not include the expense of improvements made by him on the property. This is not true; the Tax Court credited Lipsitz with these improvements but did not accept his figures as to their cost, which figures were based on the cost of such improvements if made by contractor.

The record shows that these improvements were made by Lipsitz, aided by his son and using materials obtained at wholesale prices. In view of this, the Tax Court's finding was quite proper. Also, Lipsitz included in his valua-

tion of the property transferred to Shane a $6,800. item for machinery and equipment. This is not proper, as the Tax Court held, since the record shows that this equipment was originally purchased by Shane and, therefore, could not be considered as any part of the consideration paid to Shane. In the light of this finding as to the cost of a half-interest in the assets purchased in 1937, and in view of other evidence in the record, the Tax Court was quite correct in finding that the property received in 1937 from the Warner Ice Corporation had a fair market value of $36,000.

In addition to these assets bought from the Warner Ice Corporation, Lipsitz in 1941 sold other properties to Merchants Terminal Corporation which he had purchased for his ice business between 1937 and 1941. The Tax Court's valuation of these assets is supported by the record. One item bears mentioning, however. Lipsitz contends that the value of certain property located at 423-425 West Cross Street should have been included, in addition to the value of the Warner Ice Corporation's property, in the valuation of property purchased by Merchants Terminal Corporation. The record shows, though, that this property was deeded to the Warner Ice Corporation by Lipsitz in March, 1933, and, therefore, was included in the $36,000. valuation of assets received from the Warner Ice Corporation by Lipsitz in 1937.

The Tax Court accepted Lipsitz's evidence as to the purchase of other assets between 1937 and 1941, which were transferred in 1941, but reduced his valuation of these assets. In view of the record before us, we feel that the Tax Court was correct in its findings. Cases of this nature are always difficult. The taxpayer has kept no accurate records, and as a consequence the valuation of property bought or sold many years previously is quite difficult. Where there is evidence to support its findings,

we cannot say the Tax Court erred in assigning a particular value, merely because the taxpayer says that value is incorrect. It may be of some consolation to the taxpayer if he realizes that a properly kept set of books could have helped immeasurably.

Lipsitz further contends that there was no proof of fraud on his part. We think there was ample evidence of fraud before the Tax Court. Not only does the record show a consistent under-statement of income over a long period of years but it also shows that he purchased property under the fictitious names "Fred Jacobs," "Vernon Birk," and "Morton Lipps." Also, in 1942 Lipsitz and his wife purchased properties in the names of "Morton" and "Loraine Pilstiz." In 1942, 1943, 1944 and 1945 Lipsitz directed the filing of tax returns under the name of Pilstiz; his son signed the first three returns and his wife signed the 1945 return.

When questioned about these returns, Lipsitz told a story which he later admitted to be false. In many of his business transactions, he was shifty, cunning and evasive. The Tax Court found many of the customary badges of fraud and observed: "We are satisfied that he did not have scrupulous regard for the truth * *. We do not believe his explanation that he had no cancelled checks or stubs." We think, reviewing all the evidence, that the Tax Court had before it ample proof of fraud.

Lipsitz also complains that the Tax Court did not credit him with $25,000 in cash as of December 31, 1940, which Lipsitz testified he had in a vault. The Tax Court is not required to believe the uncorroborated story of the taxpayer and was quite correct in refusing to credit this testimony here, since Lipsitz had made a prior inconsistent statement that the cash had been dissipated, which he failed to explain.

The other points raised by Lipsitz are not worthy of extensive treatment here. Suffice it to say that none of these points, all dealing with findings of fact by the Tax Court, has any merit.

For the reasons stated above, the decisions of the Tax Court are affirmed.

Affirmed.

Judgment

Filed and Entered April 12, 1955
UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 6934

Morris Lipsitz, and Morris Lipsitz and Helen Lipsitz, Petitioners,

v.

Commissioner of Internal Revenue, Respondent

On Petitions to Review the Decisions of the Tax Court of the United States.

This Cause came on to be heard on the transcript of the record from The Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the decisions of the said The Tax Court of the United States, in this cause, be, and the same are hereby, affirmed.

April 12, 1955

ARMISTEAD M. DOBIE
United States Circuit Judge.

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 6934.

Morris Lipsitz, and Morris Lipsitz and
Helen Lipsitz, Petitioners,

v.

Commissioner of Internal Revenue, Respondent.

On Petitions to Review the Decisions of the Tax Court
of the United States.

Upon the petition of the petitioners, by their counsel, and it appearing that on May 11, 1955, they filed a petition for a rehearing in the above entitled case,

It is now here ordered that the mandate in this case be, and the same is hereby, stayed pending the action of the Court on the said petition for a rehearing.
May 13, 1955.

JOHN J. PARKER
Chief Judge, Fourth Circuit.

A true copy,
Teste:

/s/ Richard M. F. Williams, Jr., Clerk,
U. S. Court of Appeals for the
Fourth Circuit.

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 6934.

Morris Lipsitz, and Morris Lipsitz and Helen Lipsitz, Petitioners,

v.

Commissioner of Internal Revenue, Respondent.

On Petitions to Review the Decisions of the Tax Court of the United States.

This Court having rendered its decision affirming the decisions of the Tax Court of the United States, and the Petitioners having on May 11, 1955, presented to the Court a petition for a rehearing of said cause, and same having been fully considered:

It is now here ordered that the rehearing asked for be and same is hereby denied.

JOHN J. PARKER
Chief Judge, Fourth Circuit.
MORRIS A. SOPER
United States Circuit Judge.
ARMISTEAD M. DOBIE
United States Circuit Judge.

FILED May 18 1955 R. M. F. Williams, Jr., Clerk

A true copy,
Teste:

/s/ Richard M. F. Williams, Jr., Clerk,
U. S. Court of Appeals for the
Fourth Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 311

MORRIS LIPSITZ AND MORRIS LIPSITZ AND HELEN LIPSITZ, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 2–33) are reported at 21 T. C. 917. The opinion of the Court of Appeals (Pet. App. 1A–8A) is reported at 220 F. 2d 871.

JURISDICTION

The judgment of the Court of Appeals was entered on April 12, 1955. (Pet. App. 8A.) The taxpayers, on May 11, 1955, filed a motion for rehearing which was denied by the Court of Appeals on May 18, 1955. (Pet. App. 10A.) The petition

for a writ of certiorari was filed on August 11, 1955. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether the court below erred in concluding that the particular circumstances of this case warranted the Tax Court in treating as taxable to the taxpayer-husband income from certain properties held by him and his wife as tenants by the entirety.

2. Whether the increases in the taxpayer's net worth were distorted because of the omission of certain properties from the starting point of the net-worth computations.

3. Whether the court below erred in sustaining the Tax Court's finding as to the fair market value of the assets of the Warner Ice Company when they were acquired by the taxpayer in 1937.

STATUTES INVOLVED

The pertinent statutory provisions involved, Sections 21, 22, 41 42, 54, and 293 of the Internal Revenue Code of 1939, are set forth in the Appendix, *infra,* pp. 12–14.

STATEMENT

This case involves income tax deficiencies and 50% fraud penalties against Morris Lipsitz (herein referred to as the taxpayer) for the calendar years 1938, 1939, 1940, 1941, and 1944 in which he filed separate returns, and against the tax-

payer and Helen Lipsitz, his wife, for the calendar years 1942 and 1943 in which they filed joint returns. (R. 3, 33–35.) The deficiencies were arrived at by the use of the so-called net-worth method because of the taxpayer's failure to keep adequate books and records. (R. 24.) A number of issues were raised by the taxpayer in the Court of Appeals relating not only to the Commissioner's use of the net-worth method, but also to several of the items entering into the net-worth computation and the Tax Court's finding that the deficiencies were due to fraud.

The petition for certiorari does not challenge the decision below upon most of these points, but is concerned principally with the treatment accorded income from property held by the taxpayer and his wife as tenants by the entirety, and the valuation of certain assets received by the taxpayer from the Warner Ice Company in 1937. The facts relevant to these issues may be summarized as follows:

The taxpayer and his wife resided in Baltimore, Maryland, during the years involved. (R. 3.) Commencing about 1920 the taxpayer invested in real estate in that city. He purchased many properties which he rehabilitated and made available for rental. (R. 4.)

From 1932 to 1941 the taxpayer was also interested, among other businesses, in the ice business. (R. 4.) On March 28, 1933, the Warner Ice Com-

pany completed incorporation and, except for qualifying shares, its stock was owned in equal amounts by the taxpayer and his brother-in-law, Louis Shane. Certain properties in which the taxpayer and his wife had interests were transferred to the corporation and were used in connection with the operation of the ice plant. Other properties were improved for use as ice stations, that is, refrigerated buildings for the storage of ice. About the middle of 1937 the taxpayer and Shane came to a parting of the ways and undertook to divide the assets of the ice business. The taxpayer acquired Shane's half interest in the stock of the corporation and, in turn, transferred to Shane certain real properties. Upon becoming sole stockholder in 1937, the taxpayer caused the corporation to be liquidated and thereafter continued to operate the business as a sole proprietorship. Thereafter, he made several additions and improvements in connection with the business. On May 1, 1941, the taxpayer and his wife sold all their interests in the properties used in the ice business to the Merchants Terminal Corporation for $57,500. (R. 4, 10–13.)

The sale of the ice plant properties in 1941 was not reported by the taxpayer and his wife in any of their federal income tax returns. The Tax Court concluded that the acquisition of such of these properties as were acquired by the liquidation of the corporation in 1937 constituted a taxable transaction so that the assets took on a new

tax basis consisting of their then fair market value. It found that such properties had a fair market value of $36,000 at that time. (R. 12, 13, 28.) The Tax Court found that there was a capital gain of $17,357.49 from the sale of these properties, and the Court of Appeals affirmed. (Pet. App. 4A–7a.)

The taxpayer's affairs were often conducted in a secretive and confusing manner. He and his wife had interests in real estate in the names of nonexistent or fictitious persons. (R. 27.) During the taxable years involved they owned a substantial amount of property as tenants by the entirety. (Pet. App. 2A.) Among these were rental properties consisting of fee-simple interests in lands and buildings and leasehold interests in lands subject to ground rent upon which buildings owned by the taxpayer and his wife were located. They also included certain properties which were used in the various businesses of the taxpayer, including the ice business above referred to. (R. 5, 7–10.)

In certain of the taxable years involved the taxpayer filed separate returns in which he treated income from properties held by the entirety as his own. Consistent therewith, both in his net-worth statement and that of the Commissioner, all of the income from the properties held by the entirety was included for such years. The case was unambiguously presented to the

Tax Court by counsel for both sides on the basis that the net-worth statement of both spouses was to be used for all the years in controversy, even though the taxpayer's liability alone was involved for the years in which he filed separate returns. The taxpayer repeatedly testified that he considered as his own the income in question. The Tax Court treated such income accordingly. (R. 24–25, fn. 1.) The court below affirmed. (Pet. App. 2A–4A.)

ARGUMENT

This case presents only factual issues and raises no question of law warranting review by this Court. There are no conflicting decisions.

1. There is no merit in the contention (Pet. 7–16) that the decision below, in taxing to the taxpayer-husband in the years 1938, 1939, 1940, 1941, and 1944 in which he filed separate returns income from property held by the entirety, is contrary to this Court's decisions in *Poe* v. *Seaborn,* 282 U. S. 101; *Goodell* v. *Koch,* 282 U. S. 118; *Hopkins* v. *Bacon,* 282 U. S. 122; and *United States* v. *Malcolm,* 282 U. S. 792, dealing with the taxation of community income in community property States. The decision below turned upon the particular facts of this case. The appellate court was fully cognizant of the necessity for considering the applicable state law, here the law of Maryland, in determining the question of ownership of income from property held by the

entirety. It was equally aware that in ordinary circumstances under Maryland law each spouse is entitled to one-half of the income from property held under a tenancy by the entirety. (Pet. App. 2A–3A.) However, under Maryland law the spouses can vary this result if they choose by an understanding evidenced by either an agreement or merely by their conduct. *Brell* v. *Brell,* 143 Md. 443; *Jenkins* v. *Middleton,* 68 Md. 540; *Farmers & Merchants' Nat. Bank of Balto.* v. *Jenkins,* 65 Md. 245. The court below found such an agreement in this case, and its decision is based upon the particular circumstances involved. Its ruling upon such a determination of local law by a Court of Appeals raises no question warranting review. *Ragan* v. *Merchants Transfer Co.,* 337 U. S. 530, 534, rehearing denied, 338 U. S. 839.

The court below properly concluded (Pet. App. 3A) that there was an understanding between the spouses with respect to the ownership of the income from property held by the entirety as evidenced by their course of conduct with respect to the operation of the properties and the income therefrom. For example, the taxpayer testified that he became "sole owner" (Tr. 204) of the Warner Ice Company in 1937, the properties of which were allegedly held by the entirety. Furthermore, after liquidating the corporation in 1937, he continued to operate the ice company as

an individual business until May 1, 1941. (R. 12–13.) The court below from a consideration of the whole record found that the taxpayer completely controlled the properties, made all decisions as to purchases and sales thereof, and in reality actually earned the income involved. As the court pointed out, Mrs. Lipsitz had so little connection with the properties and businesses which were productive of the income involved that she even failed to appear at the lengthy trial before the Tax Court. The taxpayer again and again testified that he considered as his own the income in question. (Pet. App. 3A–4A.)

It appears further that before the Tax Court the taxpayer agreed that that court might properly treat the properties held by the entirety and the income therefrom in the manner in which it did. (R. 24–25, fn. 1.) Thus, he is scarcely in a position to question the correctness of the decision below on this aspect of the case.

2. That portion of the decision below dealing with the increase in the taxpayer's net worth during the taxable years involved is not in conflict with the decisions in *Holland* v. *United States,* 348 U. S. 121, rehearing denied, 348 U. S. 932; *Smith* v. *United States,* 348 U. S. 147; *Marcella* v. *Commissioner,* 222 F. 2d 878 (C. A. 8th); *Thomas* v. *Commissioner,* 223 F. 2d 83 (C. A. 6th). The *Holland* and *Smith* cases were criminal cases. Consequently, in developing the net-

worth increases of the respective defendants the Government bore a completely different burden from that in the present case. Here the Commissioner's determination, except with respect to the issue of fraud, is presumed to be correct and the taxpayer had the burden of proving it wrong. The *Marcella* and *Thomas* cases turned upon completely different factual situations from that involved here.

The taxpayer's contention (Pet. 18–19) that there was a distortion of the increase in his net worth because of the failure of the Commissioner to allow him credit with respect to certain Whatcoat Street properties at the beginning point of the net-worth computations was not presented to the court below. In any event, the extent of the increase in his net worth was a matter for resolution by the trier of the facts and presents no issue reviewable here.

3. The lower court correctly held that the Tax Court was not obliged to accept the opinion testimoney of the taxpayer's expert witnesses as to the fair market value of the Warner Ice Company properties at the time of their acquisition by the taxpayer upon the liquidation of that company in 1937. It is well settled that opinion testimony is merely advisory and, even though uncontradicted, is not binding upon the Tax Court. *Sartor* v. *Arkansas Gas Corp.*, 321 U. S. 620, 627–628; *Dayton P. & L. Co.* v. *Commis-*

sion, 292 U. S. 290, 299; *Fox River Paper Corp.* v. *United States,* 165 F. 2d 639, 641 (C. A. 7th); *Gloyd* v. *Commissioner,* 63 F. 2d 649 (C. A. 8th), certiorari denied, 290 U. S. 633; *Tracy* v. *Commissioner,* 53 F. 2d 575 (C. A. 6th), certiorari denied, 287 U. S. 632; *Doric Apartment Co.* v. *Commissioner,* 94 F. 2d 895 (C. A. 6th). The Tax Court's valuation of the ice company properties was founded upon that court's view of the evidence. The Tax Court was impressed by the testimony regarding the increase which took place in the fair market value of similar properties between 1937 and 1941, the year of the commencement of the national emergency preceding World War II. The court accepted the amount of $57,000 for which the property was sold in 1941 as representing the fair market value at that time, and made the adjustments it thought necessary to compensate for the rise in value which occurred between that time and 1937, the year which the assets were acquired by the taxpayer. Its determination of the value of the property involved was based upon all of the relevant evidence in the record. (R. 28–29, fn. 2.) The Court of Appeals correctly concluded that the Tax Court's findings as to the fair market value of the properties in question are warranted by the record. (Pet. App. 4A–7A.)

This issue, as well as the other issues raised, turns upon the facts, as to which there was no disagreement between the trial and appellate

courts. A well-established rule of this Court makes concurrent findings of two courts below final in the absence of exceptional circumstances. *Comstock* v. *Group of Investors*, 335 U. S. 211, 214.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.
ELLIS N. SLACK,
ROBERT N. ANDERSON,
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Attorneys.

SEPTEMBER 1955.

APPENDIX

Internal Revenue Code of 1939:

SEC. 21. NET INCOME.

(a) *Definition.*—"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

* * * * *

(26 U. S. C. 1952 ed., Sec. 21.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

* * * * *

(26 U. S. C. 1952 ed., Sec. 22.)

SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so

employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(26 U. S. C. 1952 ed., Sec. 41.)

SEC. 42. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

(a) [As amended by Sec. 114 of the Revenue Act of 1941, c. 412, 55 Stat. 687] *General Rule.*—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. * * *

* * * * *

(26 U. S. C. 1952 ed., Sec. 42.)

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

(26 U. S. C. 1952 ed., Sec. 54.)

SEC. 293. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.

* * * * *

(b) *Fraud.*—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

* * * * *

(26 U. S. C. 1952 ed., Sec. 293.)

Sections 21, 22 (a), 41, 42, 54 (a), and 293 (b) of the Revenue Act of 1938, c. 289, 52 Stat. 447, applicable to the taxable year 1938, contain provisions identical with the corresponding sections of the Internal Revenue Code of 1939 above quoted.

U. S. GOVERNMENT PRINTING OFFICE: 1955